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Supreme Court of the United States

OCTOBER TERM, 1945.

No. _____

TONY GRANIERI, BANKRUPT,
PETITIONER,

versus

TONY BLANCHE SCHRAMM, CREDITOR,
RESPONDENT.

Petition for Writ of Certiorari

TO THE UNITED STATES CIRCUIT COURT OF
APPEALS, FIFTH CIRCUIT.

TO THE HONORABLE HARLAN FISKE STONE, CHIEF
JUSTICE, AND THE ASSOCIATE JUSTICES OF
THE SUPREME COURT OF THE UNITED
STATES:

The petitioner, Tony Granieri, respectfully prays this
Honorable Court for a writ of certiorari to the United States
Circuit Court of Appeals for the Fifth Circuit, for the
reasons hereinafter set out.

The brief in support of this petition begins at page 6.

All emphasis in this petition and brief is supplied, except where it is stated otherwise.

I.

JUDGMENT BELOW.

The judgment sought to be reviewed was entered June 15, 1945, and appears at page 84 of the Record.

II.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

Petitioner is a farmer-debtor, who was adjudged a Bankrupt under Section 75, Sub-section s, of the Bankruptcy Act, 11 U. S. C. A., Section 203, sub-section s. The question presented arises out of the redemption provisions of the farmer-debtor law, Section 75, sub-section s(3) of the Bankruptcy Act, 11 U. S. C. A., Section 203, Sub-section s (3). The applicable part of this latter section provides that " * * * the debtor may pay into court the amount of the appraisal of the property * * * Provided, That upon request * * * the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court * * * and thereupon the court shall, by an order turn over full possession and title of said property * * * to the debtor".

The respondent filed with the conciliation commissioner a request for a reappraisal hearing to fix the value of the farm for redemption purposes. A hearing was had, and the commissioner entered an order which recited that based on "the evidence on value and other pertinent matters" he

valued the farm in question in the sum of \$29,950. On petition to review, the District Court summarily affirmed and adopted without change the commissioner's finding of a \$29,950 value.

The opinion of the Circuit Court appears at R. 84.³

III.

STATEMENT OF THE BASIS OF THE JURISDICTION OF THIS COURT.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code, 28 U. S. C. A. 347(a).

The petitioner has complied with Section 8(a) of the Act of February 13, 1925, 28 U. S. C. A. 350. The final judgment of the court below was rendered on June 15, 1945, and this petition is filed within three months thereafter.

IV.

THE QUESTIONS PRESENTED.

Briefly stated, the questions presented are:

(1). In fixing the valuation at which a farmer-debtor shall redeem his farm, does the statutory provision in Section 75, sub-section s(3) that the court shall "set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted", permit the conciliation commissioner to fix such valuation by considering as substantive evidence, over objection, the original appraisal reports filed more than two years prior to the reappraisal hearing? (R. 38-41).

(2). In fixing the valuation at which a farmer-debtor shall redeem his farm, does the statutory provision in Section 75, sub-section s(3) that the court shall "set a date for hearing, and after such hearing, fix the value of the prop-

erty, in accordance with the evidence submitted", permit the conciliation commissioner to fix such valuation based on "the evidence of value and other pertinent matters"? (R. 3-4).

(3). May the District Court, on petition for review of the conciliation commissioner's order fixing redemption value of the farm under section 75 s(3), summarily affirm and adopt without change the commissioner's finding of a \$29,950 value, when the commissioner, in fixing such value, took into consideration as substantive evidence, in addition to "the evidence on value", "other pertinent matters", which said "other pertinent matters" included the appraisal reports filed with the commissioner more than two years prior to the valuation hearing.

V.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT OF CERTIORARI.

(1). There is involved a question of importance in the interpretation and administration of a federal statute, Section 75 s(3) of the Bankruptcy Act, which relates to the method of redemption by a farmer debtor of his farm from secured debts.

(2). The decision of the Circuit Court of Appeals in the instant case holding that "The fact that the Commissioner and the Court below considered other evidence appearing in the record in the bankruptcy case on the question of value does not require a reversal", is in conflict with the decision of the Circuit Court of Appeals for the Eighth Circuit in the case of *Rhodes vs. Federal Land Bank of St. Paul*, 140 F. (2) 612, Cert. Den. 64 S. Ct. 1143.

(3). The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of the Circuit

Court of Appeals for the Ninth Circuit in the case of *Moser vs. Mortgage Guarantee Co.*, 123 F. (2d) 423.

(4). The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of this Court in the case of *Carter vs. Kubler*, 320 U. S. 243, 64 S. Ct. 1.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Fifth Circuit, directing the said court to certify and send to the Supreme Court of the United States for its review and determination a full and complete transcript of the Record and proceedings in the said Circuit Court; that the said decree of the Circuit Court be reversed and your petitioner have such other and further relief in the premises as to this Honorable Court may seem meet and just.

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